

# **Brunswick Board of Appeals**

## **Minutes**

### **January 22, 2004**

**Commission Members Present:** Chair Wayne Hawes, Secretary Barbara Baker, Vice Chair Dawn Page, and Patty O'Brien, Alternate

**Mayor & Council Present:** Councilmen Stull

**Staff Present:** City P & Z Administrator Rick Stup

Chairman Hawes called the meeting to order at 7:00 PM

**Minutes:**

The minutes for the August 28 meeting were reviewed and approved subject to minor typo revisions. (Motion by Ms. Baker and seconded by Mr. Hawes, passed Yea 2 Nay 0 Abstentions 1 Page.)

**Chairman:**

Chairman Hawes introduced the two new members and announced the new procedure for the Alternate Member Attendance and Meeting Participation.

Mr. Hawes noted for the record that the case tonight was Old Business instead of as listed on the agenda. Mr. Stup to revise the record agenda.

**Old Business:**

**Zoning – Variance & Special Exception**

**Ellis Burruss** – Request for Variances from the Front and Side Yard Setbacks and Special Exceptions Request for uses to build a multi-use building, located at 101 & 105 East Potomac Street (Tax Map 201, Parcel 954), Zoned B-3, BR-BOA-03-02-V & SE.

Chairman swore in those wishing to testify on the case.

**Staff Presentation**

Mr. Stup read the case file into the record and presented the Data Sheet (Copy Attached).

The revised submission has addressed all but the third item that the Board requested as part of the August continuance.

The request for non-permitted multi-uses of the proposed building is the following:

1. Retail:

**Staff Presentation Cont.**

- Department and Clothing
  - Furniture and Appliance with Repair Services
  - Hardware and Paint
  - Specialty Shops including Jewelry, Stationary, Florist, Pet Supplies and Video
  - Antiques
  - Machine Parts Supplier
  - Computer and Electronic Machine Parts
2. Restaurant:
- Fine dining, family-oriented restaurant with inside seating and additional outdoor seating. Traditional American or Ethnic Food would be served. A full commercial kitchen would be on site. A train theme, as well as good food, could make this a distinctive restaurant in the Brunswick Region.
  - A small café with indoor seating serving breakfast, lunch and dinner with outdoor seasonal seating provided. This would be a neighborhood restaurant that would draw its clientele from Brunswick and the local area.
  - A bakery & bagel shop offering a variety of baked goods or take-out. Catering and delivery services could be offered.
- None is proposed to involve live musical entertainment or other activities that would generate high levels of sound.
3. Services:
- Personal Services such as Laundry/Dry Cleaning, Sewing/Tailoring, Beauty/Barber Shop, Pet Services with no Outdoor Kennels
  - Printing and Copying
  - Mailing
  - Health Club/Gym
4. Limited Manufacturing and Assembly: such as Computer or other Electronic Assembly, Packaging/Fulfillment Subcontractor, or Bindery

The applicant requests only these Retail, Restaurant, Service, and Limited Manufacturing/Assembly use designations.

If the Board is considering the approval of some variance, the following conditions should be considered for that approval:

- Use of brick-pavers or grass-crete on-site instead of asphalt or concrete

**Staff Presentation Cont.**

- A landscape area be provided on the slope separating the existing and proposed new structure, and the area behind and beside the existing structure should the existing structure be permitted to remain
- Architectural review by the Planning Commission is required
- Fencing to give the “Court Yard Effect” along East Potomac Street and First Avenue is required as part of the Site Plan Review
- Exterior storage from the existing building is eliminated
- The sidewalk along the existing building is repaired and tied into concrete sidewalk
- Sidewalk along Mooseheart Drive provided along the entire frontage to the existing building front replaced sidewalk
- Exterior lighting inside the lot is restricted to ground fixtures shielding the glare onto adjoining properties
- All specific uses and areas for the uses be identified
- The adverse impact on the adjoining lot, if the ten (10”) inch concrete retaining wall is removed, and what alternative is proposed (Are there any existing easements, agreements, etc. for the retaining wall area?)
- Is the Sight Distance Study adequate to address the Board’s concerns
- Planning Commission and Council approval for uses and improvements within the City Right-of-Way

He also stated that the Applicant is bound by their testimony from both meetings if the cases are approved.

Mr. Stup answered questions addressing the plan, sidewalks, sight distance, proposed uses, existing use and topography. He stated that the re-submitted plan met minimum requirements and the Sight Distance Study met locally accepted standards.

**Applicant**

Applicant Ellis Burruss presented the case stated that he wanted flexibility for the uses but submitted a list of possible uses for the Board to consider with Carl Thomas of CPJ Associates. He further stated that he wanted flexibility for the uses but submitted a list of possible uses for the Board to consider. He questioned the Chair for the procedure with regard to the case. It was agreed that the Board would hear testimony on the variance and then the special exception. Once both sets of testimony were completed, the Board would take action on each.

Mr. Burruss placed in the record a letter of support for the cases (Copy attached.) from Marie S. Keegin, Executive Director of Frederick County Office of Economic Development for downtown economic development. (Copy attached.) He also clarified

**Applicant Cont.**

the extent of the requested Setback Variances, which are as follows: Potomac Street 40' to 0', First Avenue 40' to 0', and Mooseheart Drive 40' to 30'.

Mr. Thomas discussed Variances and Staff's points, which are generally addressed by the Planning Commission, commenting that they were basically premature and design in nature.

Mr. Stup was asked by the Chair to comment on the testimony. He replied that because of the extent of the Variances and the potential uses, it was an option of the Board to provide guidance and conditions for the Planning Commission to specifically address during Site Plan Review.

Messrs. Burruss and Thomas answered questions with regard to maintenance with the Zero Lot Line, the existing retaining wall, the existing structure and operation, sidewalks, exterior lighting, landscaping and the plan in general. Pursuant to the discussions, the Applicant made the following proffers:

- Exterior lighting will be limited to wall-mounted, oriented downward and in accordance with the "Dark Sky Principles", to be located along the street frontages and entrances as required by the Fire Marshal
- The existing block building will be demolished and a sidewalk acceptable to the Planning Commission constructed along their frontage of Mooseheart Drive in a time frame acceptable to the Board of Appeals once the current occupant ceases their business operation
- The new structure will be limited to two stories with a flat roof anticipated, subject to Planning Commission review and approval
- The new foundation will be designed with material to act as a retaining wall for the ground of the adjoining property to replace the existing support structures and a support extended from the new foundation to replace the existing retaining wall
- If the Applicant, Mr. Burruss, does not purchase and develop the subject property, any Board of Appeals approvals are relinquished and become void

**Testimony In Support**

Jerry Cayford, 6 First Avenue, testified in support of both the Variances and Special Exceptions but had concerns that the building not be over 2 stories in height.

Karin Cayford, 6 First Avenue, testified in support of both requests but had concerns with regard to the retaining wall, the access to the adjoining property, the utilization of the area of the existing building once it was removed, and quality-of-life issues for the adjoining property.

**Testimony In Opposition**

None.

**Applicant**

Mr. Burruss addressed the Special Exception non-permitted uses listed in his request. He answered Board questions with regard to noise, exterior uses, performance standards, and operation hours, and explained his understanding of the uses, especially manufacturing and assembly.

**Testimony In Support**

Given under the Variance Testimony.

**Testimony In Opposition**

None.

**Additional Relevant Testimony**

None.

**Rebuttal**

Mr. Thomas requested that the Applicant Proffers referenced by Mr. Stup be restated for their concurrence, which was done by Mr. Stup. Mr. Burruss agreed to all such proffers.

**Decision**

Ms. Baker stated that the applicant had demonstrated compliance with the following requirements for granting a Variance:

Under Article 24.3,C, a variance may be granted provided that the need justifying the variance is substantial and immediate and not merely for the convenience of the applicant or to increase the dollar value of a property. The applicant must prove that the strict application of the regulation creates a practical difficulty, or specifically that:

1. Strict compliance with the regulations would prevent the use of the property for a permitted purpose or would render conformance unnecessarily burdensome.
2. A lesser variance than that applied for would not provide adequate relief.
3. Granting the variance would not contradict the purpose and intent of the Zoning Ordinance or compromise the public interest,

and made a motion to approve the variance request in accordance with the Staff Report with conditions as follows:

**Decision Cont.**

- Brick-pavers or grass-crete to be used on-site instead of asphalt or concrete
  - A landscape area acceptable to the Planning Commission be provided on the slope separating the existing and proposed new structure, and the area behind and beside the existing structure
  - Architectural review by the Planning Commission
  - Fencing and landscaping to give the “Court Yard Effect” along East Potomac Street and First Avenue is required as part of the Site Plan Review
  - Exterior storage from the existing building is eliminated
  - The sidewalk along the existing building is repaired and tied into concrete sidewalk in accordance with the applicant’s proffer within one (1) year after the current business operator utilizing the existing building ceases their business operation
  - Sidewalk along Mooseheart Drive provided along the entire frontage to the existing building front replaced sidewalk in accordance with the applicant’s proffer within one (1) year after the current business operator utilizing the existing building ceases their business operation
  - Exterior lighting inside the lot is restricted to the Applicant’s Proffer and shielding the glare from adjoining properties
  - All specific uses and areas for the uses are limited to Permitted Uses in the B-3 Zone and the Non-Permitted Uses listed in the revised request
  - Planning Commission and Council approval for uses and improvements within the City Right-of-Way
  - Applicant is bound by their testimony from both meetings,
- and the following Applicant Proffers:

- Exterior lighting will be limited to wall mounted oriented downward and in accordance with the “Dark Sky Principles” to be located along the street frontages and entrances as required by the Fire Marshal
- The existing block building will be demolished and a sidewalk acceptable to the Planning Commission constructed along their frontage of Mooseheart Drive within one (1) year after the current occupant ceases their business operation
- The new structure will be limited to two stories with a flat roof anticipated, subject to Planning Commission review and approval
- The new foundation will be designed with material to act as a retaining wall for the ground of the adjoining property to replace the existing support structures and a support extended from the new foundation to replace the existing retaining wall
- If the Applicant, Mr. Burruss, does not purchase and develop the subject property, any Board of Appeals approvals are relinquished and become void

; Ms. Page seconded the motion.

**VOTE: Yea 3 Nay 0**

**Decision**

Ms. Page stated that the applicant had demonstrated compliances with the following requirements for granting a Special Exception:

1. The proposed use is in harmony with the purpose and intent of the Comprehensive Plan and Articles 4 and 24.3, c, City of Brunswick Zoning Ordinance.
2. The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located.
3. Operations in connection with any Special Exception use will not be more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics, than would be the operations of any permitted use not requiring Special Exception approval.
4. Parking areas will comply with the off-street regulations of the Zoning Ordinance and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.
5. The street system providing access to the proposed use is adequate to serve the site for the intended use.

and made a motion to approve the Special Exception Request in accordance with the Staff Report with conditions as follows:

- All specific uses and areas for the uses are limited to Permitted Uses in the B-3 Zone and the Non-Permitted Uses listed in the revised request
- Planning Commission and Council approval for uses and improvements within the City Right-of-Way
- Applicant is bound by their testimony from both meetings,

and the following Applicant Proffer:

- If the applicant, Mr. Burruss does not purchase and develop the subject property, any Board of Appeals approvals are relinquished and become void

; Ms. Baker seconded the motion.

**VOTE: Yea 3 Nay 0**

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**New Business:**

None.

**Board Matters:**

**Procedures**

Mr. Stup presented the Staff Draft of the Meeting/Submission Schedule for 2004 with tentative reschedule dates, which didn't appear to have any Holiday conflicts. After some discussion, the Board agreed to revise the December Meeting to December 16 and adjust the submission date to 30 days prior to the meeting and posting date in accordance with the Zoning Ordinance. (Motion by Ms. Baker and seconded by Ms. Page, unanimously passed.)

**Public Comment**

None.

**Alternative Member Participation**

Mr. Stup briefed the Board on the Mayor's desire to have the Alternate Member function the same as the Planning Commission Alternate.

**Vice Chair Election**

Mr. Stup informed the Board of the options with regard to the vacant position of Vice Chair. (Motion Ms. Baker and seconded by Mr. Hawes for Dawn Page to be the Vice Chair, unanimously passed.)

Chairman Hawes announced the next meeting was February 26 at 7:00 PM. Mr. Stup confirmed that the January Minutes and the Resolutions on the Burruss Case were the only agenda items.

**Public Comment:**

None.

**Adjournment:**

The meeting was adjourned at: 9:05 PM.

Respectfully submitted,

Barbara Jean Baker, Secretary  
Brunswick Board of Appeals